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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,434	04/14/2000	CORNELIA BERGHOF	2727-100J	1917

7590 10/31/2002  
RONALD R SANTUCCI  
745 Fifth Avenue  
NEW YORK, NY 10151

EXAMINER

SOUAYA, JEHANNE E

ART UNIT PAPER NUMBER

1634

DATE MAILED: 10/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/485,434**Applicant(s)  
**Berghof et al**Examiner  
**Jehanne Souaya**Art Unit  
**1634**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 23, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**THE PERIOD FOR REPLY [check only a) or b)]**

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: none
- Claim(s) objected to: none
- Claim(s) rejected: 7, 10-14, 16-18, 20-22, 24-26, and 28-48
- Claim(s) withdrawn from consideration: \_\_\_\_\_
8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

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### ATTACHMENT

1. The proposed amendment filed 9/23/2002 will not be entered because the amendment raises new issues requiring further search and consideration and would also require new grounds of rejection under 35 USC 112, first and second paragraph, as well as possible new grounds under 35 USC 102 and 103. Specifically, these changes include: "a sequence *represented by*", the set *consists essentially* of one or more members".

In response to arguments directed to the claims as currently pending, the response traverses the 35 USC 103 rejection over Holmes and states that none of the primer pairs according to Holmes enable the detection of all the representatives of the 7 *Salmonella* subspecies and that the reference makes no claim or suggestion that it can reliably detect all the representatives of the 7 *Salmonella* subspecies. This argument has been thoroughly reviewed but was found unpersuasive. Firstly, the claims are not directed to primer pairs but to sets of oligonucleotides where the set can comprise a single nucleic acid sequence. Secondly, Holmes does teach that oligonucleotide ST4 positively hybridizes to all 7 *Salmonella* subspecies claimed in the instant claims (table 4). For these reasons and the reasons made in previous office actions, this rejection is maintained.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Jehanne Souaya whose telephone number is (703)308-6565. The examiner can normally be reached Monday-Friday from 9:00 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (703) 308-1152. The fax phone number for this Group is (703) 305-3014.

Any inquiry of a general nature should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Jehanne Souaya*

Jehanne Souaya  
Patent examiner  
Art Unit 1634

*October 24, 2002*

*W. Gary Jones*

W. Gary Jones  
Supervisory Patent Examiner  
Technology Center 1600